

**OFFICE OF THE CITY ATTORNEY  
SOUTH SALT LAKE CITY**

**Memorandum**

TO: Mayor and City Council  
CC: City Recorder  
FROM: Paul H. Roberts, Deputy City Attorney  
DATE: 1/9/2015

RE: DRAFT AMENDMENTS TO ALCOHOL ORDINANCE

Accompanying this memorandum is a draft amendment of Chapter 5.08, the City's Alcohol Code. While there are numerous technical and minor amendments, I would like to emphasize some of the major shifts which are proposed in this draft. This draft is the result of many months of consideration and revision by staff. There is no particular rush to push this legislation through, but we feel that changes are necessary, and would like policy direction and input from you over the next few months.

**Background: Current Classes of Alcohol Licenses**

The current scheme of alcohol regulation includes three classes of alcohol permits in the City: Class A, Class B, and Class C. (*See* Article IV of the Alcohol Code – 5.08.400 et seq.).

Class A licensees may sell alcohol only for off-premises consumption. This includes locations such as grocery stores, convenience stores, or manufacturers who wish to engage in retail sales. No alcohol may be consumed at the location. A cap of 1 license per 400 population is in place for these establishments. Class A licensees must be located more than 200 feet from community locations (schools, churches, libraries, parks, etc).

Class B licensees may sell alcohol for on-premises consumption, with beer served in its original containers, but beer sales cannot exceed 50% of the establishment's total sales. Licensees which meet proximity criteria may also be issued state liquor consents by the City. This category includes most restaurants. A cap of 1 license per 1,200 population is in place for these licenses. They must be located more than 600 feet from community locations.

Class C licensees may sell alcohol for on-premises consumption, with beer on tap or in its original container. They may sell as much alcohol (in any form) as they wish, without regard to the amount of food or other products sold. This type of establishment would generally be referred to as a bar, tavern, or club. A cap of 1 license per 3,000 population is in place for these licenses. They must be located more than 600 feet from community locations.

**Definitions - § 5.08.020**

Some of our definitions in the current alcohol code conflict with state definitions in title 32B, which was substantively changed a few years ago. This has led to some confusion by licensees. For instance, in our code the term "tavern" generally applied to any Class C licensee, but the same term has become a term-of-art in the State code ("tavern" is a sub-category of an on-premise license). Thus, a person may have had a "club" for purposes of state code, and a "tavern" for purposes of City code, even though it did not have a "tavern" license under State law. Retaining the City's definition of "tavern" devolves no real benefit to the City's regulations; as such, it makes sense to eliminate it. Other definitions were identical, but as the State's Alcohol Code continues to evolve, it is more efficient simply to adopt the state alcohol code's

definitions. New definitional terms have been added where the state code lacks a definition, or for terms which we would like to keep unique to our code; e.g. “Conviction,” “crime of moral turpitude,” and “five barrel brewhouse.”

Keeping our code in line with the state alcohol code makes it simpler for businesses to apply for the appropriate consents and licenses, and also enables them to obey state and local alcohol laws. With the exception of a few definitions, we recommend adopting the State’s terms.

#### **Suspension pending criminal prosecution - § 5.08.070**

In the previous version of the alcohol code, if a licensee or consentee was arrested for a disqualifying offense, an automatic interim suspension would take effect against their alcohol license and consent. It is proposed that, in order to guard against the danger of unfairly depriving the licensee of their business interest based solely on an arrest decision. This requires the license official to assess whether there was probable cause to effect the arrest. If an individual does not believe there was probable cause, they may appeal the interim suspension. In cases of more serious offenses, for which a preliminary hearing is held, a bindover order from a criminal court (which finds that there is probable cause that the individual committed the offense) obviates the need for an administrative hearing.

#### **Ownership transfers - § 5.08.080**

If these provisions are adopted, they will be a significant policy shift for the City.

Under current alcohol ordinances, alcohol licenses may not be transferred or sold to anyone else. The policy behind this is essentially one of amortization. Due to the significant number of Class C licenses (taverns) in the City in 2007, which was accompanied by adverse secondary effects, the Council sought a constitutional way to reduce those numbers. The two components of this plan included: (1) imposing a cap on Class C licenses – one per 3,000 population; and (2) prohibiting the transfer of alcohol licenses from one owner to another.<sup>1</sup> Through license amortization, those who held current licenses were allowed to maintain the benefit of their investment until they decided to retire.

The plan has been largely successful. The number of Class C licenses in the City has fallen from 22 in 2008 to 12 in 2015. According to census estimates, the City’s population in 2013 was 24,702 – maintaining a cap of 8 Class C licenses for the City.

The draft amendments removes one of these measures – the prohibition against transferring the alcohol license. It also introduces a separately capped area for new licenses (*see next section for further discussion*).

This change is recommended for several reasons. First, the State has removed its prohibition on license transfers, and we have run into business owners who are confused or upset when they discover that they are not permitted to sell their local alcohol license, even though they can transfer their state license. As a result, state licenses have been sold and the use relocated outside of the City. Permitting license transfer to new owners will make our code more consistent with state code. Second, with the cap and prohibition on transfers in place, we have also noted that there is little reason for owners of establishments to invest in the upkeep or renovation of their business locations. As an owner reaches the end of their career, the

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<sup>1</sup> Unlike nonconforming uses, which are transferrable by prior occupants of property, licensees have more limited property right in business licenses; essentially, it is limited to the right to not have their licenses revoked without due process. *See e.g., Dairy Prod. Serv. v. City of Wellsville*, 2000 UT 81, ¶ 48, 13 P.3d 581. The licensee does not have the property right to transfer the license to another individual, unless the City so provides.

establishment sinks into disrepair and dilapidation. If transfers are permitted, owners will have incentive to invest in their properties to make them marketable. Third, and connected to the second, by permitting license sales, alcohol uses may well transfer into more appropriate areas of the City. For instance, if a tavern has a legal nonconforming use (grandfathered), and is within 600 feet of a school, the ability to sell its license may result in the bar relocating to a new area, to which proximity requirements will be applicable.

The code revision contemplates three type of acceptable license transfers:

- (1) A license transfer which results in a reduction from Class C to Class B;
- (2) A license transfer which moves to an RDA area, with an agreement to either renovate or demolish the existing establishment; or
- (3) A license transfer to a new owner, who will remain at the same location, but will renovate the new location.

Transfers of the first type have occurred over the past 7 years; but this type of transfer will be useful if we reach the cap imposed on Class B licensees.

Transfers of the second type can spur development, and ensures that the old establishment is either re-used through renovation, or demolished to make way for a different use, appropriate to that zone.

Transfers of the third type will require significant upgrades to the property:

- Installing windows across 50% of the premises – This is a CPTED principle which makes it less likely that criminal conduct will occur at the establishment, and aids law enforcement by permitting them to quickly view the interior and ensure no problems are underway.
- Installing pedestrian lighting, landscaping, accessibility features, architectural features, security cameras and fire safety upgrades.

These requirements are designed to require significant investment on the part of the purchaser. It may be that purchasers will simply choose to take their state liquor licenses elsewhere; if not, we hope that these changes will safeguard against the transfer of establishments which need serious attention from one owner to another.

#### **Additional licenses for RDA area - § 5.08.410**

During economic development discussions, the license cap has arisen – particularly the Class C license – and may pose an obstacle to some new development. If a night-life district was planned in the Central Pointe area, for instance, it is anticipated that Class C licenses would be necessary for such a district to be successful.

In order to preserve that possibility, it is proposed that three additional Class C licenses be allocated to master-planned redevelopment project areas. These licenses would not be transferable outside of that RDA area for ten years. The code also permits the City Council to approve additional licenses in the RDA areas, should the need for additional licenses arise.

It is recommended that Randy Sant provide input into the benefits of having licenses set aside for these areas.

#### **Work permit qualifications - § 5.08.220**

Under prior code, no person who had been convicted of a felony or crime of moral turpitude (generally speaking - fraud, theft or violence) could ever obtain a work card. Unless that person was pardoned or was granted expungement, they were ineligible to work in the alcohol field in South Salt Lake. This does not seem equitable. Instead, we propose a period of good behavior -

five-years from release from supervision or custody – after which time they are eligible to obtain a work permit, regardless of prior criminal history.

Conversely, staff recommend retaining a lifetime prohibition against work permits being granted for anyone who has committed specific crimes related to the alcohol business. Those who wish to obtain a work permit and who have a prior conviction for these offenses would need to obtain expungement or pardon before they could be granted a permit.

### **Local consents - § 5.08.300**

Under Utah alcohol law, a business must obtain a local consent before the State will grant that business a state liquor license. This has been referred to as a local “veto power.”<sup>2</sup> In South Salt Lake, the Council has directed staff to grant consent under certain circumstances – generally taking into consideration the proximity of the proposed establishment and the cap on business licenses.

The State significantly amended its alcohol code a few years ago, resulting in new categories of alcohol licenses with the State. Staff and business owners have found it difficult to apply existing code to requests for consents. Instead, we seek to list current licenses provided by the State.

In addition to more permanent licenses and consents, the State also allows Single Event permits to be issued to businesses and non-profit entities. The proposed ordinance directs staff to approve those requests, so long as the owner or organizer is not disqualified due to prior convictions, and the event is not located within 200 feet of a residence. The code provides the opportunity for Single Events within that range, if the residents consent to it.

### **License categories**

In order to maintain the cap on Class C licenses, we recommend that the current classification system for alcohol licensees be maintained. There are minor changes to each classification, and we recommend creating a new category of licenses, as well.

#### **Class A licenses - § 5.08.440**

This section now permits licensed package agencies to be located within the City as Class A licensees. A package agency is essentially a privately-owned subcontractor to the State in the distribution of liquor. It also expressly adds convenience stores and fueling stations as appropriate locations for beer sales. The 200 foot proximity requirement would continue to apply to all Class A licensees, including package agencies.

#### **Class B licenses - § 5.08.450**

Changes in this section include permitting the sale of beer on tap – removing the requirement that beer be served in its original containers – and the sale of “growlers” – beer which is taken from the tap and bottled and sealed on-site, for off-premises consumption by the customer. Certain categories of state licenses are specifically listed as potential holders of Class B licenses: full-service restaurants, limited-service restaurants, beer-only restaurants, on-premise banquet, dining club, on-premise recreational, and manufacturing.

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<sup>2</sup> *Boulder Mt. Lodge v. Town of Boulder*, 1999 UT 67, ¶ 16, 983 P.2d 570.

The 50% alcohol sales threshold to retain a Class B license remains the same under the draft ordinance, unless a state code imposes a smaller percentage (e.g. limited-service restaurants are limited to 30% alcohol sales by state law).<sup>3</sup>

The proposed draft also increases the cap on Class B licenses in the City, changing the limit from one per 1,200 population (21 licenses) to one per 800 population (31 licenses). *See* Section 5.08.410(E)(2). These licenses have not historically been the cause of as many adverse secondary effects as Class C licensees, and an increased cap will continue to attract restaurants in the City, and the increase is particularly important as redevelopment is underway.

#### Class C licenses - § 5.08.460

Like Class B licenses, specific state licenses have been identified as appropriate candidates for Class C licenses: equity clubs, fraternal clubs, social clubs, on-premises taverns, and manufacturing. The section adds a requirement that food be provided on-site – although this can include something as small as a bowl of peanuts. Food consumption can reduce the rate of alcohol absorption in the body, and thus reduce the rate at which an individual becomes intoxicated.

#### Class M license - § 5.08.470

This is a new category of license in the City. Since our last substantive amendment, we have had an influx of alcohol manufacturing businesses, including wineries, breweries and distilleries. Because our ordinance did not prohibit their location or require a regulatory license with the City, they have been licensed as general manufacturing businesses, with a local consent for manufacturing purposes.

This license incorporates state requirements for manufacturers (subsection B).

It also introduces requirements upon owners of breweries who wish to operate a brew-pub (subsection C). Traditionally, brew-pubs have not had the same difficulties associated with bars or taverns. They are also a better fit in neighborhoods. As such, it is proposed that brew-pubs (which are limited solely to the consumption of beer and heavy beer) be permitted within 200 feet of community locations, rather than the 600 feet normally imposed on Class B or C licensees. Brew-pubs would not be permitted to allow any consumption of wine or liquor. The requirement for a five-barrel brewhouse<sup>4</sup> is imposed to prevent the placement of so-called “micro-breweries.” While some find such establishments appealing, staff are concerned that they would not be a good fit in our community. The five-barrel brewhouse requirement will require a significant investment by business owners who demonstrate their intention to establish a permanent location within the City.

If a brew-pub wishes to serve alcohol other than beer and heavy beer, then it would be required to apply for a Class B or Class C license, depending upon the establishment’s sales of alcohol in proportion to food or other products. They would not be granted a license unless there were licenses available below the cap for those classes of license.

#### **Nuisance prevention – 5.08.500 et seq.**

The nuisance provisions have been largely retained, but have been expanded to include all establishments which allow on-premise consumption, rather than solely Class C establishments.

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<sup>3</sup> Utah Code Ann. § 32B-6-305(7).

<sup>4</sup> Five-barrel brewhouse is defined in this draft code – the fermentation vat must have the capacity to contain at least 155 gallons.

It has also been expanded beyond preventing acts of violence to other nuisances, such as littering, disturbing the peace, or committing noise violations.

Rather than the rigid establishment of penalties, and successive increases in the level of license suspension, it is proposed that the code simply require graduated penalties to be imposed, taking into account such factors as the severity of the offense, the business owner's level of cooperation, measures taken in advance of the incident, and the establishment's history. As with other, similar code provisions, the reasonableness of the graduated penalty will be reviewable by the City's ALJ, and the district court.

### Conclusion

As I mentioned, there are many provisions which you may wish to discuss. This memo highlights what I anticipate to be the most critical aspects of the amendments. There are multiple ways to further discuss the amendments. Options for further discussion include scheduling a work meeting, scheduling time to meet in small working groups, or scheduling this for the first regular Council meeting in February, giving you more time to digest the amendments. We could also invite the licensees to provide input to the Council, if you would like to schedule a specific time for public input during a future council meeting.

If you have any questions, please feel free to contact me.